

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BARBARA B.,

Plaintiff,

v.

MARTIN O'MALLEY,
Commissioner of Social Security,

Defendant.

NO. 4:24-CV-5091-TOR

ORDER DENYING *IN FORMA
PAUPERIS* STATUS

BEFORE THE COURT is the Magistrate Judge's Report and Recommendation regarding Plaintiff's application to proceed *in forma pauperis*. ECF Nos. 2; 5. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, the Report and Recommendation ("R&R") (ECF No. 5) is **ADOPTED** in full and Plaintiff's Application to Proceed *In Forma Pauperis* ("IFP") (ECF No. 2) is **DENIED**.

BACKGROUND

Pursuant to the delegation provided in this District's Local Magistrate Judge Rule 2(a)(7), the Magistrate Judge ruled on Plaintiff's IFP application with the

1 recommendation that Plaintiff's application be denied. *Id.* Plaintiff did not file an
2 objection within the time allotted.

3 **DISCUSSION**

4 “[A]ny court of the United States may authorize the commencement,
5 prosecution or defense of any suit, action or proceeding, civil or criminal, . . .
6 without prepayment of fees or security therefor.” 28 U.S.C. § 1915(a)(1). A
7 plaintiff may commence an action without paying the filing fees by submitting an
8 affidavit stating that she lacks sufficient funds and upon a finding that her suit is
9 not frivolous or malicious. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.
10 2015) (citation omitted). The affidavit is sufficient if it states that the plaintiff,
11 because of her poverty, cannot “pay or give security for the costs” and still be able
12 to provide for herself and dependents the “necessities of life.” *Adkins v. E.I.*
13 *DuPont de Numours & Co.*, 335 U.S. 331, 339 (1948). The IFP statute does not
14 define what constitutes insufficient assets, but the Ninth Circuit has recognized that
15 “[o]ne need not be absolutely destitute to obtain benefits of the [IFP] statute.”
16 *Escobedo*, 787 F.3d at 1234 (citation omitted). Nevertheless, a plaintiff seeking
17 IFP status must allege poverty “with some particularity, definiteness and
18 certainty.” *Id.* (citation omitted)

19 Pursuant to Federal Rule of Civil Procedure 72, the district court “must
20 determine *de novo* any part of the magistrate judge’s disposition that has been

1 properly objected to" and "may accept, reject, or modify the recommended
2 disposition." Fed. R. Civ. P. 72(b)(3); *see* 28 U.S.C. § 636(b)(1)(C). A party has
3 fourteen (14) days after service of a copy of the R&R to file and serve written
4 objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1);
5 ECF No. 5 at 2. Failure to file objections within the specified time waives the right
6 to challenge the Magistrate Judge's findings of fact. *Turner v. Duncan*, 158 F.3d
7 449, 455 (9th Cir. 1998). The failure to object to a pure legal conclusion, however,
8 is only "a factor to be weighed in considering the propriety of finding waiver of an
9 issue on appeal." *In re Grand Jury Subpoena (Mark Torf/Torf Env. Mgmt.)*, 357
10 F.3d 900, 910 (9th Cir. 2004) (quoting *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th
11 Cir. 1991)).

12 As mentioned, Plaintiff did not file objections within the fourteen-day time
13 frame. *See* ECF No. 5 at 2. The Court has reviewed Plaintiff's application for IFP
14 status, which establishes that her monthly income exceeds \$7,500 a month. ECF
15 No. 2 at 1. Therefore, the Court agrees with the Magistrate Judge's conclusion that
16 Plaintiff has not established indigency and that she has sufficient means to cover
17 the Filing Fee and Administrative Fee required under 28 U.S.C. § 1914.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. The Magistrate Judge's Report and Recommendation, ECF No. 5, is

3 **ADOPTED.**

4 2. Plaintiff's Application to Proceed *In Forma Pauperis*, ECF No. 2, is

5 **DENIED.** Plaintiff **SHALL PAY** the full filing and administrative fee

6 within thirty (30) days of this Order. Absent timely compliance with this

7 Order, this action will be **dismissed** without further notice.

8 The District Court Executive is directed to enter this Order and furnish
9 copies to the parties. The file remains **OPEN**.

10 DATED August 29, 2024.



11 A handwritten signature in blue ink that reads "Thomas O. Rice".
12 THOMAS O. RICE
13 United States District Judge